

**STATE OF RHODE ISLAND CITY OF EAST PROVIDENCE
COUNTY OF PROVIDENCE ZONING BOARD OF REVIEW**

MINUTES

A meeting of the East Providence Zoning Board of Review was held at 7:00 P.M., on Wednesday, 1 October 2014, in the City Council Chambers, East Providence City Hall.

The following members were present:

Eugene Saveory – Chairman

Michael Beauparlant – Vice-Chairman

John Braga

Pier-Mari Toledo

Antonio H. Cunha - ABSENT

Richard Croke, Sr. – 1st Alternate

Gary Pascoa – 2nd Alternate - ABSENT

Edward Pimentel – Zoning Officer / Clerk

Gregory Dias – Assistant City Solicitor

Chairman Saveory then announces that it is the policy of the Zoning Board of Review to caution all petitioners that they have the right to counsel before the Board and failure to do so at this time does not constitute sufficient grounds for a change in circumstances under the

eighteen-month repetitive petition clause. All petitioners are also cautioned that if the petition is approved, all construction must be done in compliance with the submitted plan(s), application and testimony presented to the Zoning Board of Review. A change of any sought must obtain the requisite approval of the Zoning Board of Review. All work that deviates from the approval will be ordered halted and promptly removed. Comments will be limited to the petition being heard and no comments will be heard that do not pertain to an item scheduled on tonight's docket. He also notes that it is the policy of the Board that no new agenda item will be heard after 10:30 PM.

Chairman Saveory also notes that the Board welcomes any commentary from the public provided it solely pertains to an item on tonight's docket.

A. Swearing in of the Zoning Officer

Chairman Saveory asks Assistant City Solicitor Dias to swear in the Zoning Officer, Mr. Pimentel.

II. SEATING OF ALTERNATE MEMBERS

Chairman Saveory informs the public that Mr. Cunha is absent, and therefore Mr. Croke, 1st Alternate, will be both a participating as well

as voting member on all of tonight's agenda items.

Chairman Saveory then informs the public that Mr. Pascoa, 2nd Alternate, is likewise absent.

III. APPROVAL OF ZONING BOARD MINUTES

Chairman Saveory announces that there are no minutes for approval.

IV. ZONING OFFICER'S REPORT

Chairman Saveory announces that there is no report this month.

V. CORRESPONDENCE / DISCUSSION

Chairman Saveory announces that there are neither correspondence nor discussion items to be discussed this month.

VI. STAFF REPORTS

A. Planning Department Staff Report – Previously Submitted.

B. Complaint List – September 2014

Chairman Saveory announces that the referenced documents are already rendered part of the official record.

VII. CONTINUED BUSINESS

1A. Petition No. 6554: David and Maria Botelho, seek a Use Variance, to permit construction of a front porch addition onto a two-unit residence (said residence having been established by variance in March, 1978), thereby deeming the stated addition (expansion) prohibited, pursuant to Section 19-413(b) ‘Alteration of nonconforming use’ and Section 19-98 ‘Schedule of use regulations’, for property located at 77 – 79 Ninth Street, being Map 106, Block 32, Parcel 012.10, and located within a Residential 6 District.

[NOTE: The applicant initially applied for a special use permit, however it was concluded post submission that the present usage of the property was in fact established by use variance, and not a pre-existing legal non-conforming usage of the property. The application was properly modified during the respective hearing to seek a Use Variance.]

Mr. Joseph Cabral, 100 Mayflower Drive, Seekonk, Massachusetts, project architect, is properly sworn in.

Mr. Cabral informs the Board that he was requested by the applicant's to present their petition tonight, due to a language barrier. He proceeds to describe property specifics, including present zoning designation. He then describes the dimensional relief sought, which involves both coverages. The present building coverage is 24.68%, and will be increased to 29.4%. The present impervious coverage will actually be reduced from the present 38.44% to 36.13%, however still realizing an overall non-compliant coverage of 65.50%. The lot is quite substandard, thereby realizing the excessive coverage.

Mr. Cabral than asks the Zoning Officer to clarify the issue of necessitating a special use permit. Zoning Officer explains that he was unable to find any related zoning history, and therefore concluded that it was a pre-existing legal non-conforming land use. Any initial expansion of a non-conforming land use is by means of issuance of a special use permit. Thereafter, it no longer acquires said rights, and can only be expanded by use variance.

Mr. Cabral explains that his architectural plans are based on a Class I Surveyed site plan. The request for the prior continuance was to redesign the front-porch addition, thereby averting the need for any setback variances. The overall addition was reduced in size on both sides. The only remaining relief is coverage oriented. The reason for the open, roof-covered porch, is to afford the front of the structure some relief from the southerly sun exposure. They have had to replace several doors and repair the front on several occasions due

to heat build-up. This is the primary purpose for the adding the porch, although the resulting curb-appeal is similarly important.

Mr. Cabral continues by noting that the existing planters will be removed and replaced with the proposed porch, having approximate dimensions of 7-feet by 23.6-feet. It will contribute to the fabric of the neighborhood, and is very much in character as evidenced by the fact that there are many similar two (2) and three-unit residents throughout. The proposed improvement will not only enhance the subject property but also the value of the overall neighborhood.

Chairman Saveory queries the Board, beginning with Mr. Braga.

Mr. Braga inquires as to how long the applicant has owned the subject premises? Mr. Cabral responds that it has been approximately 18-years, since 1996.

Mr. Braga than inquires about the on-site accessory shed, because it does not have the requisite five-foot setback. Zoning Officer explains that if the shed is accessory, it does not need any relief, however the question is whether it was, or was not, introduced legally.

David Botelho, 77 – 79 Ninth Street, East Providence, RI, subject petitioner, is properly sworn in.

Mr. Cabral informs the Board that he will be interpreting for the

petitioner.

Mr. Cabral informs the Board that Mr. Botelho has indicated that the shed was introduced approximately 12-years ago. Zoning Officer notes that there are two (2) options, either he relocate the shed in accordance with the regulations, or seek a modification to tonight's petition, and request the necessary setback relief.

The Board discusses the matter and concurs that the necessary accessory shed setback relief be sought in conjunction with the proposed front porch.

Mr. Cabral formally requests a modification to tonight's petition to seek the necessary shed relief. Mr. Braga renders a motion to modify the petition to include the shed relief.

Mr. Braga than inquires about the setback relief associated with the present residence. Zoning Officer responds that that is in fact pre-existing. The initial proposal was to extend the porch to be in-line with the residence, there by also incurring two (2) side-yard setback variances. However, they continued their petition, consulted with Mr. Cabral, and reduced the porch to eliminate said deviations. Mr. Braga notes for the record that the porch actually adds considerable aesthetic value to a residence that is perhaps the least appealing at the present moment.

Mr. Beauparlant inquires if there is any overhang associated with the accessory shed, because they cannot approve an encroachment. Mr. Cabral notes that he is not sure of the rear façade of the shed, and how far it extends to the property boundary.

Much discussion ensued regarding the shed issue, concluding that if there is an overhang, at most a 12-inch extension will be allotted in the form of the additional setback relief – however only if necessary to maintain the present footprint – this is not to extend the petitioner an opportunity to expand said shed. Should the shed encroach onto the abutting property, it will have to remove that portion that encroaches. Also, any gutter improvements that may be necessary – depending upon the proximity to the abutting property owner – will be included in the additional 12-inches afforded the petitioner.

Mr. Cabral informs the Board that based on the survey plan and the petitioner's description, there should be a minimum of two and one-half feet resulting setback.

Mr. Beauparlant than inquires about the rear existing impervious surface. Mr. Cabral notes that it is all pre-existing, including the presence of the bulk-head. Zoning Officer explains that bulk-heads, albeit exempt from setbacks, do contribute to building coverage.

Mr. Croke notes for the record that the Planning Department indicates in their staff report that there is associated zoning history, conversion

of the subject property to a two-unit residence be established by variance in approximately March, 1978. He proceeds to read that portion of the Planning Department staff report into the record. Zoning Officer responds that his office has over a decade of missing zoning history – for a good portion of the 1970s. However, the Planning Department kept a duplicate copy of all the history. He was unable to find any associated history. However, that being the case, than this technically must be treated as a Use Variance, because it is now an expansion of a prohibited land use that was established by variance. This too can be treated as a modification, if the Board so sees fit to approve.

Mr. Croke notes for the record that the present property is quite displeasing, being comprised of an asphalt jungle, and therefore recommends eliminating some portion of the impervious surface. He inquires if there is any means of introducing much-needed landscaping along the sides of the proposed porch. Mr. Cabral agrees and suggests perhaps a two-foot cut along both sides for planters of some form. Mr. Cabral than informs the Board that he has conferred with the petitioner, and he is willing to render such an improvement.

Mr. Croke than inquires about the rear-yard, noting that it is similar displeasing. There was an assortment of scattered laddering and the so-called grassed-surface was not well-maintained. Mr. Cabral notes that the petitioner has expressed his apologizes, however he has

been engaging in some minor painting around the windows, and will immediately rectify the grass situation. He works third-shifts and sleeps during the day, perhaps he had missed cutting the grass the day the Board visited the site.

Ms. Toledo notes for the record that she too is not so please with the frontal appearance – there is simply too much asphalt. However, given that this is a pre-existing condition, and the porch will add much-needed curb appeal, she too is quite supportive.

Chairman Saveory inquires if the porch will remain open in perpetuity, or does the petitioner have any future intention in enclosing with windows or some other means? Mr. Cabral responds that the petitioner has indicated that he does not have any such intentions.

Chairman Saveory inquires if there is anyone else present who would like to speak in favor of the subject petition. Hearing and seeing none, Chairman Saveory inquires if there is anyone present who would like to speak against the subject petition. Hearing and seeing none, Chairman Saveory queries the Board for a motion.

Chairman Saveory queries the Board for a motion.

Motion by Mr. Braga, based on all the evidence and testimony presented to the Zoning Board of Review and the personal knowledge

of the members of the Board of the land and area of the City of East Providence, the Zoning Board hereby finds:

- 1. That the use is compatible with neighborhood and surrounding land uses.**
- 2. That the use will not create a nuisance in the subject neighborhood.**
- 3. That the use will not hinder the future development of the City.**
- 4. That the use does conform to applicable section(s) of the use requested.**

Mr. Braga hereby further finds pursuant to Section 19-45(b) of the City of East Providence Zoning Ordinance:

- 5. That the applicant would be deprived of all beneficial use of the subject property if the petitioner is required to comply with the Ordinance.**

Mr. Braga moves that the use variance be Granted subject to the petitioner fulfilling the following conditions:

- 1. Petitioner(s) obtaining any, and all, necessary permits.**

2. Strict compliance with the submitted site plan (or amended site plan as it may be applicable), all exhibits, and entire testimony provided during the respective hearing.

Mr. Braga notes for the record that he will elaborate on additional conditions during the Motion for Dimensional Relief.

Chairman Saveory asks Mr. Botelho if he accepts the conditions of approval just stipulated, understanding that strict compliance means that any deviation will necessitate revisiting the Zoning Board of Review; said revisit may be requested by either the Zoning Officer or any member of the Zoning Board of Review. Mr. Botelho, after conferring with Mr. Cabral, responds that he fully understands and accepts the conditions just stipulated.

The motion is Seconded by Ms. Toledo.

Roll Call Vote:

Mr. Braga - Aye Pre-existing condition and therefore the granting of the

use variance is quite appropriate.

Mr. Beauparlant - Aye The proposed improvement will realize

much-need curb

**appeal. It will not increase a neighborhood nuisance,
in fact being quite conducive and improve overall
conditions.**

**Mr. Croke - Aye Concurs that it will realize much-need curb-appeal.
However, still quite displeased with the vast quantity
of asphalt.**

Ms. Toledo - Aye Concurs with Mr. Croke's comments.

**Chairman Saveory - Aye The present two-unit residence has been in
the**

**neighborhood since minimally 1978, without any
complaints as far as he is aware. However, there is
need for some front façade improvement, and this
will assist in rectifying that situation.**

**Use variance unanimously granted, subject to the aforementioned
condition(s).**

**1B. Petition No. 6555: David and Maria Botelho, seek Dimensional
Relief, to permit construction of a front porch addition onto a two-unit
residence, without complying with several dimensional requirements,
as described below, for property located at 77 – 79 Ninth Street, being
Map 106, Block 32, Parcel 012.10, and located within a Residential 6
District.**

A. Dimensional Variance, to permit the stated improvement, resulting

in exceeding the maximum building coverage requirement pursuant to Section 19-145 – Four and four-tenths (4.40%) percent variance, resulting in the subject property being covered approximately twenty-nine and four-tenths (29.40%) with total structures.

B. Dimensional Variance, to permit the stated improvement, resulting in exceeding the maximum impervious lot coverage requirement pursuant to Section 19-145 – Twenty and one-half (20.50%) percent variance, resulting in the subject property being covered approximately sixty-five and one-half (65.50%) with total impervious surface (inclusive of all structures).

[NOTE: In addition, during the respective hearing, it was concluded that accessory dimensional setback relief was required for the present accessory shed. Said relief documented below.]

C. Dimensional Variance, to permit retention of the accessory shed, failing to comply with the minimum accessory setback requirement pursuant to Section 19-144(b) – Two and one-half (2.50) foot variance, resulting in the stated accessory shed being situated approximately two and one-half feet off of the westerly (rear) property boundary.

[NOTE: Should the referenced accessory shed have an overhang, at most a 12-inch extension will be allotted in the form of the additional setback relief – however only if necessary to maintain the present footprint – this is not to extend the petitioner an opportunity to

expand said shed. Should the shed encroach onto the abutting property, it will have to remove that portion that encroaches. Also, any gutter improvements that may be necessary – depending upon the proximity to the abutting property owner – will be included in the additional 12-inches afforded the petitioner.]

[NOTE: All testimony can be referred to above, under Petition No. 6554.]

Chairman Saveory inquires if there is anyone else present who would like to speak in favor of the subject petition. Hearing and seeing none, Chairman Saveory inquires if there is anyone present who would like to speak against the subject petition. Hearing and seeing none, Chairman Saveory queries the Board for a motion.

Chairman Saveory queries the Board for a motion.

Motion by Mr. Braga, based on all the evidence and testimony presented to the Zoning Board of Review and the personal knowledge of the members of the Board of the land and area of the City of East Providence, the Zoning Board hereby finds:

1. The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and not due to a physical or economic disability of the applicant excepting those

physical disabilities addressed in RIGL 45-24-30(16).

2. The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.

3. The granting of the requested variances will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the city's comprehensive plan upon which this chapter is based.

4. That the relief to be granted is the least relief necessary.

Mr. Braga hereby further finds pursuant to Section 19-45(b) of the City of East Providence Zoning Ordinance:

5. In granting the dimensional variances, that the hardship that will be suffered by the owner of the subject property if the dimensional variances are not granted shall amount to more than a mere inconvenience.

Mr. Braga moves that the dimensional variances be Granted subject to the petitioner fulfilling the following conditions:

1. Should the referenced accessory shed have an overhang, at most a 12-inch extension will be allotted in the form of the additional setback

relief – however only if necessary to maintain the present footprint – this is not to extend the petitioner an opportunity to expand said shed. Should the shed encroach onto the abutting property, it will have to remove that portion that encroaches. Also, any gutter improvements that may be necessary – depending upon the proximity to the abutting property owner – will be included in the additional 12-inches afforded the petitioner.

2. Flower-beds are introduced at each end of the proposed front-porch – approximately two-feet in width, extending to the stated porch.

3. The proposed porch remains unenclosed in perpetuity.

4. Petitioner(s) obtaining any, and all, necessary permits.

5. Strict compliance with the submitted site plan (or amended site plan as it may be applicable), all exhibits, and entire testimony provided during the respective hearing.

Chairman Saveory asks Mr. Botelho if he accepts the conditions of approval just stipulated, understanding that strict compliance means that any deviation will necessitate revisiting the Zoning Board of Review; said revisit may be requested by either the Zoning Officer or any member of the Zoning Board of Review. Mr. Botelho, after conferring with Mr. Cabral, responds that he fully understands and

accepts the conditions just stipulated.

The motion is Seconded by Ms. Toledo.

Roll Call Vote:

Mr. Braga - Aye It is the unique character of the property, and is not the

result of any prior actions. It will contribute and not detract from the neighborhood, and will not impair the intent and purpose of the Comprehensive Plan.

Mr. Beauparlant - Aye Concur's with Mr. Braga's comments.

Mr. Croke - Aye Will greatly improve the character of the subject property and surrounding neighborhood.

Ms. Toledo - Aye Concurs with fellow Board members.

Chairman Saveory - Aye Concurs with fellow Board members.

Dimensional variances unanimously granted, subject to the aforementioned condition(s).

IX. PROCEDURES

Chairman Saveory announces that there are no procedures to be discussed.

X. ANNOUNCEMENTS

Chairman Saveory announces that the next meeting of the Zoning Board of Review is scheduled for Wednesday, 12 November 2014, at 7:00 PM, in the City of East Providence Council Chambers, City Hall, East Providence, RI.

XI. ADJOURNMENT

Motion to adjourn by Mr. Braga. The motion is Seconded by Ms. Toledo and Unanimously voted to adjourn. Meeting is adjourned at 8:15 P.M.

Edward Pimentel, AICP

Zoning Officer / Clerk

Secretary